

## Message Text

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ACTION EA-10

INFO OCT-01 ISO-00 PM-03 L-02 NSC-05 CIAE-00 DODE-00

INR-07 NSAE-00 PA-01 RSC-01 USIA-06 PRS-01 SP-02

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FM AMEMBASSY MANILA

TO SECSTATE WASHDC 209

INFO AMEMBASSY BANGKOK

AMEMBASSY JAKARTA

AMEMBASSY KUALA LUMPUR

AMEMBASSY SINGAPORE

CINCPAC

C O N F I D E N T I A L MANILA 1284

E.O. 11652: GDS

TAGS: PINT, RP

SUBJECT: SUPREME COURT WILL HEAR ARGUMENTS ON PETITION TO  
CANCEL REFERENDUM

BEGIN SUMMARY: JANUARY 29 PRESS REPORTS SOLICITOR GENERAL'S  
REPLY TO PETITION FILED WITH SUPREME COURT TO CANCEL  
FEB. 27 REFERENDUM. PETITION FILED JAN. 21 ON BEHALF  
OF DETAINED SEN. AQUINO AND 13 OTHERS INCLUDING LOPEZ,  
JR., OSMENA III AND TWO BISHOPS. SC WILL HEAR ARGUMENTS  
JAN. 30. GIVEN PAST PERFORMANCE, SC WILL PROBABLY FOLLOW  
SOLICITOR GENERAL'S LINE, REAFFIRM REFERENDUM'S CONSTI-  
TUTIONALITY AND DISMISS PETITION. PETITION AND COURT  
HEARING WILL GIVE REFERENDUM EXERCISE CERTAIN SPURIOUS  
SUSPENSE. INTERESTING ASPECT OF LATEST DEVELOPMENT IS  
ATTENTION GIVEN TO NAME OF SENATOR AQUINO AND MARCOS'  
PEEVISH REACTION TO EVEN TOKEN OPPOSITION. END SUMMARY

1. MANILA PRESS JANUARY 29 FRONT-PAGES SOLICITOR GENERAL'S  
REPLY TO PETITION FILED WITH SUPREME COURT JAN. 21, ASKING  
THAT COURT CANCEL REFERENDUM. PETITION WAS FILED BY  
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VETERAN OPPOSITION LEADER TANADA ON BEHALF OF SEN. AQUINO,  
EUGENIO LOPEZ, JR., SERGIO OSMENA III, BISHOPS CLAVER AND

NEPOMUCENO OF MINDANAO AND 9 OTHERS. IT ARGUES THAT (A) MARCOS HOLDS NO LEGAL OFFICE AND POSSESSES NO LAWFUL AUTHORITY UNDER EITHER 1935 OR 1973 CONSTITUTIONS TO CALL REFERENDUM; (B) EVEN IF HE HELD OFFICE, HE WOULD HAVE NO POWER TO APPROPRIATE FUNDS FOR REFERENDUM AS THIS LEGISLATIVE PEROGATIVE; AND (C) EVEN IF MARCOS HELD OFFICE AND COULD LEGALLY CALL REFERENDUM, IT WOULD NOT BE VALID UNDER MARTIAL LAW, WHEN "PEOPLE ARE DENIED THEIR BASIC FREEDOMS, PARTICULARLY THEIR FREEDOM OF EXPRESSION AND ASSEMBLY."

2. SOLICITOR GENERAL'S REPLY MAINTAINS THERE NO DOUBT MARCOS IS LAWFUL AND DULY ELECTED PRESIDENT OF PHILIPPINES AND REFERENDUM CONSTITUTIONAL. GOVERNMENT CLAIMS PETITION IS FIRST STEP IN CONCERTED EFFORT TO STOP REFERENDUM AND IS "NOT REALLY A LEGAL ACTION BUT A POLITICAL OPPOSITION." CITING MARTIAL LAW CASES PREVIOUSLY DECIDED BY SUPREME COURT GOVERNMENT ARGUES JULY 1973 REFERENDUM CONSTITUTED VOTE FOR PRESIDENT TO CONTINUE IN OFFICE.

3. IN MAJOR ADDRESS JAN. 28 (PRESIDENT SPOKE FOR THE MOST PART IN TAGOLOG AND COMMENTS ARE AS REPORTED IN AP.) PRESIDENT MARCOS, ADVERTING TO OPPOSITION TO REFERENDUM SAID, "IT IS NOT EASY TO BE PRESIDENT", AND DARED HIS CRITICS "TO TRY RUNNING GOVERNMENT FOR A FEW DAYS." HE CLAIMED CRITICISM ABOUT HIS REMAINING IN OFFICE ILLEGALLY AND OF THE FORTHCOMING REFERENDUM WAS EMBARRASSING IN THE EYES OF THE WORLD. "IT IS A GOOD THING TO KNOW THE CASE IS NOW PENDING DECISION BEFORE THE SUPREME COURT." MARCOS SAID PEOPLE IN GOVERNMENT MAKE MISTAKES ONCE IN A WHILE BUT TRY HARD TO CORRECT THEM. "THAT IS WHAT WE ARE TRYING TO DO IN GOVERNMENT. IF THERE ARE ABUSES, THEN TELL US AND WE WILL DO WHAT OUGHT TO BE DONE, BUT PLEASE DON'T DESTROY OUR REPUBLIC BEFORE THE EYES OF THE WORLD. THAT'S EMBARRASSING".

4. COMMENT: OPPOSITION TRIED SIMILAR TACTIC TO PREVENT REFERENDUM IN JANUARY 1973 AND FAILED. GIVEN SUPREME  
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COURT'S RECORD OF UNSWERVING SUPPORT FOR MARTIAL LAW REGIME, ITS DECISION ON JAN, 21 PETITION IS FOREGONE CONCLUSION. INTERESTING ASPECT OF PETITION FLAP IS PROMINENCE GIVEN BY PRESS TO SAN. AQUINO WHO LEADS LIST OF PETITIONERS. DAILY EXPRESS HEADLINES ITS ACCOUNT WITH "GOVERNMENT ANSWERS AQUINO PETITION." THIS IS FIRST TIME AQUINO'S NAME HAS FIGURED SO PROMINENTLY IN PRESS IN MANY MONTHS. ALSO OF NOTE IS SOMEWHAT SELF-PITYING TONE OF MARCOS' REMARKS WHICH SUGGEST FRUSTRATION AT HAVING TO PUT UP WITH EVEN WEAK AND INEFFECTIVE OPPOSITION.

THIS RATHER UNCHARACTERISTIC TONE IS PERHAPS ATTRIBUTABLE  
TO DESPAIR AT INTRACTABILITY OF MUSLIM DISSIDENCE PROBLEM  
(SEPTEL).  
SULLIVAN

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